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Siddharth Hariharan

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIDDHARTH HARIHARAN, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

ADOBE SYSTEMS INC., APPLE INC.,
GOOGLE INC., INTEL CORP., INTUIT
INC., LUCASFILM LTD., PIXAR, and
DOES 1-200,

Defendants.

Case No. C 11-2509 SBA

**NOTICE OF PENDENCY OF OTHER
ACTIONS OR PROCEEDINGS**

Pursuant to Local Rule 3-13, Plaintiff Siddharth Hariharan ("Plaintiff") submits this Notice of Pendency of Other Actions or Proceedings. Two cases filed in Santa Clara Superior Court on June 28, 2011 concern the same subject matter and parties as this action.

In addition, pursuant to Local Rule 3-13(b)(C) and 3-13(d), to facilitate coordination with the Santa Clara Superior Court, the Court should transfer this action to the San Jose Division of the U.S. District Court for the Northern District of California. Transfer to the San Jose Division would also be convenient for the parties and in the interests of justice, because the San Jose

1 Division serves Santa Clara County, the county in which the majority of the witnesses and
 2 defendants are located, and the county in which the defendants who employed over 98% of
 3 proposed class members maintain their principal places of business. Cf. L.R. 3-2(h).

4 **I. Description of the Other Actions**

5 The two recently filed cases, like this action, allege a conspiracy among Adobe Systems
 6 Inc., Apple Inc., Google Inc., Intel Corp., Intuit Inc., Lucasfilm Ltd., Pixar, and Does 1-200
 7 (“Defendants”), to fix and suppress the compensation of their employees through an illegal
 8 agreement not to recruit each others’ employees in violation of the California antitrust law, Bus. &
 9 Prof. Code sec. 16720, *et seq.*, and the California Unfair Competition Law, Bus. & Prof. Code
 10 sec. 17200, *et seq.* Plaintiffs allege that this agreement deprived those employees of higher wages
 11 and other benefits that would have accrued to them in a freely functioning market, absent
 12 Defendants’ agreement. (See attached Declaration of Dean M. Harvey in Support of the Notice of
 13 Pendency of Other Actions or Proceedings (“Harvey Decl.”) ¶¶ 2-4, Ex. A (“Devine Compl.”)
 14 and Ex. B (“Marshall Compl.”).)

15 **II. Title and Location of the Court in Which The Other Actions are Pending**

16 The two new cases were filed in Santa Clara County Superior Court on June 28, 2011.
 17 The captions are:

- 18 1. *Michael Devine v. Adobe Systems Inc., Apple Inc., Google Inc., Intel Corp., Intuit*
 19 *Inc., Lucasfilm Ltd., Pixar, and Does 1-200*, Case No. 111-cv-204053 (Santa Clara Superior
 20 Court) (“Devine”); and
- 21 2. *Brandon Marshall v. Adobe Systems Inc., Apple Inc., Google Inc., Intel Corp.,*
 22 *Intuit Inc., Lucasfilm Ltd., Pixar, and Does 1-200*, Case No. 111-cv-204052 (Santa Clara Superior
 23 Court) (“Marshall”).

24 **III. The Relationship of the Other Cases To The Pending Action**

25 The undersigned attorneys represent Plaintiff in this action as well as the plaintiffs in the
 26 two recently filed cases (collectively, “Plaintiffs”). All three cases concern the same subject
 27 matter, parties, and claims for relief.

28 Among other things, Plaintiffs allege that Defendants’ conspiracy in restraint of trade

1 included “(1) agreements not to actively recruit each other’s employees; (2) agreements to
 2 provide notification when making an offer to another’s employee (without the knowledge or
 3 consent of that employee); and (3) agreements that, when offering a position to another
 4 company’s employee, neither company would counteroffer above the initial offer.” (Hariharan
 5 Compl. ¶ 1, Dkt. No. 2, Ex. A; Devine Compl. ¶ 1; and Marshall Compl. ¶ 1.)

6 In each of the three cases an individual plaintiff seeks to represent an identically defined
 7 class:

8 All natural persons employed by Defendants in the United States on
 9 a salaried basis during the period from January 1, 2005 through
 10 January 1, 2010 (the ‘Class Period’). Excluded from the class are:
 11 retail employees; corporate officers, members of the boards of
 12 directors, and senior executives of Defendants who entered into the
 13 illicit agreements alleged herein; and any and all judges and
 14 justices, and chambers’ staff, assigned to hear or adjudicate any
 15 aspect of this litigation.

16 (See Hariharan Compl. ¶ 30; Devine Compl. ¶ 31; and Marshall Compl. ¶ 31.)

17 Plaintiffs allege the same claims for relief: violations of California’s antitrust statute,
 18 Business and Professions Code sections 16720 *et seq.*; Business and Professions Code section
 19 16600; and California’s Unfair Competition Law, Business and Professions Code sections 17200,
 20 *et seq.* (Hariharan Compl. ¶¶ 95-120; Devine Compl. ¶¶ 108-133; and Marshall Compl. ¶¶ 108-
 21 133.)

22 **IV. The Proceedings Should be Coordinated and This Case Should Be Transferred to the**
 23 **San Jose Division**

24 As described above, the three actions concern exactly the same subject matter and should
 25 be coordinated pursuant to Local Rule 3-13(b)(C). Coordination of discovery, motion practice,
 26 and trial will “avoid conflicts, conserve resources and promote an efficient determination of the
 27 action.” *Id.*

28 Plaintiffs respectfully suggest that the first step in coordination should be transfer of this
 action (*Hariharan*) to a judge sitting in the San Jose Division. It will be easier for a District
 Judge located mere minutes from the pending California actions to conduct coordinated
 proceedings with his or her California counterpart. Additionally, coordination in San Jose would
 be most efficient for the parties. The *Devine* and *Marshall* cases were filed in Santa Clara County

Superior Court because, unlike the *Hariharan* case, the plaintiffs in those cases were both formerly employed exclusively by defendants headquartered in Santa Clara County. (Devine Compl. ¶ 21; Marshall Compl. ¶ 21.) In addition, the plaintiff in the *Marshall* case currently resides in Santa Clara County. (Marshall Compl. ¶ 21.) Furthermore, it is now apparent that, of the seven Defendants, five—Adobe, Apple, Google, Intel and Intuit—maintain their principal places of business in Santa Clara County. By Defendants’ own estimates, these five defendants employed at least 98% of class members,¹ and employed 2 out of the 3 individual plaintiffs.² These five defendants negotiated, finalized, implemented, and enforced explicit agreements to eliminate competition among each other, all within Santa Clara County. (Devine Compl. ¶¶ 61-96; Marshall Compl. ¶¶ 61-96.) Thus, the vast majority of the percipient witnesses, relevant documents, and defendants are located in Santa Clara County. Accordingly, coordination in the San Jose Division will best “conserve resources” and “promote an efficient determination of the action.”

For the same reasons, transfer to the San Jose Division would also be consistent with Local Rule 3-2(h) (intradistrict transfer may be ordered to serve the “convenience of parties and witnesses and the interests of justice”). This Court has granted motions for intradistrict transfer under similar circumstances. *See, e.g., Rivera v. Hewlett Packard Corp.*, 2003 WL 24029472, at *1-*2, Case No. 03-0939 (N.D. Cal. April 22, 2003) (granting Hewlett Packard’s motion for transfer to the San Jose Division in an unlawful termination case, because Hewlett Packard maintained its principal place of business in Santa Clara County) (Armstrong, J.). In a case regarding alleged defects in the iPad, Apple Inc. (“Apple”) filed a motion for intradistrict transfer

¹ In Defendants’ notice of removal and supporting papers, Defendants use current employees as a surrogate for employees who worked from January 1, 2005 through January 1, 2010 (the class period). (*See* Notice of Removal ¶ 21, at p. 6, Dkt. No. 1.) Defendants estimate that they currently employ 83,300 individuals who would otherwise qualify as members of the class. (*Id.*) Of these, Defendants estimate that 82,283 work for defendants who maintain their principal places of business in Santa Clara County: Adobe Systems Inc., Apple Inc., Google Inc., Intel Corp., and Intuit Inc. (Declarations of Rhonda Hjort ¶ 3, Dkt. No. 4; Jack Gilmore ¶ 3, Dkt. No. 5; Joel Podolny ¶ 3, Dkt. No. 6; Tadhg Bourke ¶ 3, Dkt. No. 7; James M. Kennedy ¶ 3, Dkt. No. 8; Debbie R. Oldham-Auker ¶ 2, Dkt. No. 9; and Kumud Kokal ¶ 3, Dkt. No. 31-1.)

² The remaining two defendants, Lucasfilm Ltd. and Pixar, employed less than 2% of class members. Lucasfilm Ltd. maintains its principal place of business in San Francisco County, and Pixar maintains its principal place of business in Alameda County.

1 to the San Jose Division because Apple maintained its principal place of business in Santa Clara
 2 County, despite the fact that the alleged defects manifested themselves in Contra Costa County,
 3 and one of the named plaintiffs resided in Contra Costa County. *Baltazar v. Apple Inc.*, 2010 WL
 4 4392740, Case No. 10-3231, at *1 (N.D. Cal. Oct. 29, 2010) (White, J.) Apple argued that the
 5 case should be transferred to the San Jose Division because “the design and development of the
 6 iPad occurred in Santa Clara County” and “the advertising and marketing plans were developed
 7 there as well.” *Id.*, at *2. The Court concluded that the case arose in Santa Clara County and
 8 granted Apple’s motion to transfer. *Id.*

9 Coordination in San Jose also makes sense in the likely event that Defendants attempt to
 10 remove the *Devine* and *Marshall* actions. Those cases would be properly assigned upon removal
 11 to the San Jose Division. To avoid conflicts, one District Judge should decide Plaintiffs’
 12 forthcoming remand motion (or motions) and, should remand be denied in whole or in part, one
 13 District Judge should preside over all three actions in order to consistently decide major motions
 14 such as Plaintiffs’ motion for class certification. Indeed, if all three cases end up in District
 15 Court, Plaintiffs expect them to be substantially consolidated. *See* 28 U.S.C. § 1404(b).
 16 Similarly, if Plaintiffs’ remand motion is granted, Plaintiffs will seek to coordinate the cases
 17 pursuant to California Code of Civil Procedure section 404.

18 **V. Plaintiffs Are Meeting and Conferring With Defendants Regarding Coordination Of**
 19 **The Proceedings**

20 Plaintiffs have provided courtesy copies of the two newly filed actions to Defendants’
 21 counsel and have asked Defendants’ counsel to accept service on behalf of their clients. Plaintiffs
 22 have asked Defendants’ counsel to meet and confer regarding coordination of all three cases, and
 23 will continue to do so in good faith and on an expedited basis. Local Rule 3-13(a), however,
 24 required Plaintiffs to file this Notice of Pendency of Other Action or Proceeding notwithstanding
 25 that the conference process on coordination is not complete. Should the conference process not
 26 produce an agreement on coordination, Local Rule 3-13(c) permits a response to this notice to be
 27 filed by any party within 14 days from today.
 28

1 Dated: June 29, 2011

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2
3 By: /s/ Dean M. Harvey
4 Dean M. Harvey

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